

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PEOPLETECH GROUP INC.

Plaintiff,

V.

UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY et al.,

## Defendants.

CASE NO. C19-1959 MJP

ORDER DENYING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND GRANTING  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT

This matter is before the Court on Plaintiff's motion for summary judgment, (Dkt. No.

31) and Defendants' cross-motion for summary judgment, (Dkt. No. 36). Having considered the motions, the opposition and reply briefs, (Dkt. Nos. 37, 40), and the Certified Administrative Record, (Dkt. No. 30), the Court DENIES Plaintiff's motion and GRANTS Defendants' motion.

## Background

Plaintiff is challenging a decision by U.S. Citizenship and Immigration Services (USCIS) to deny its petition for a work visa for a prospective noncitizen employee. The Court has jurisdiction under 28 U.S.C. § 1331 because this case arises under the Administrative Procedure Act and the Immigration and Nationality Act. The parties move for summary judgment on

1 whether the agency's denial of the petition was "arbitrary, capricious, an abuse of discretion, or  
 2 otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

3 Plaintiff filed a petition to USCIS to sponsor Kalyan Achanta for a work visa for  
 4 professionals with an advanced degree, commonly referred to as an EB-2 visa. See  
 5 8 U.S.C. § 1153(b)(2). Plaintiff offered Mr. Achanta, an Indian national with a master's degree  
 6 in computer science from the City University of New York, a position as a computer information  
 7 systems manager. (Dkt. No. 21 ¶¶ 1–2.) The process of securing a visa involves three steps: (1)  
 8 the employer must obtain a labor certification from the Department of Labor; (2) the employer  
 9 may then petition USCIS to classify the beneficiary as an EB-2 professional; and then, if the  
 10 petition is successful, (3) the beneficiary may seek lawful permanent residency.

11 To gain approval of the petition before USCIS, the employer must prove three things: (1)  
 12 it has a valid labor certification; (2) it can pay the offered wage; and (3) the offer is bona fide.  
 13 USCIS is charged with investigating the facts underlying each petition and determining whether  
 14 they are true. 8 U.S.C. § 1154(b). Plaintiff has the burden of proof before the agency. 8 U.S.C.  
 15 § 1361.

16 Plaintiff filed this petition in December 2018. (Dkt. No. 30, Administrative Record (in  
 17 citations hereinafter as "AR") at 1.<sup>1</sup>) USCIS denied the petition after invalidating the labor  
 18 certification for material misrepresentation. Specifically, USCIS found Plaintiff did not disclose  
 19 that the beneficiary is the brother-in-law of the company's president. Plaintiff filed this lawsuit  
 20 to challenge that decision. (See Dkt. No. 1, Complaint.) After a partial settlement, USCIS  
 21 agreed to reinstate the labor certification, reopen and reconsider the petition, and consent to  
 22

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23 <sup>1</sup> Page numbers of the Administrative Record correspond to the page numbers listed at the bottom of each page of  
 24 the Administrative Record, rather than ECF page numbers.

1 Plaintiff filing an amended complaint if the petition were denied. (See Dkt. No. 21, Amended  
 2 Complaint.) For this reason, the validity of the labor certification is not at issue, and the denial  
 3 was based on the other two elements (ability to pay and bona fide offer).

4 At that point, USCIS issued a request for evidence, dated May 22, 2020. (AR at 14–27.)  
 5 Plaintiff submitted a response, dated October 14, 2020. (AR at 28–1463.) USCIS denied the  
 6 petition on January 8, 2021, and Plaintiff filed the Amended Complaint. (AR at 1–26.)

7 **Discussion**

8 **I. Whether USCIS’s Denial of Plaintiff’s Petition Is Supported by Substantial  
 9 Evidence**

10 **A. Standard of Review**

11 Summary judgment is appropriate if the evidence, viewed in the light most favorable to  
 12 the nonmoving party, demonstrates “that there is no genuine dispute as to any material fact and  
 13 the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The substantive  
 14 law governs which facts are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248  
 15 (1986). “Only disputes over facts that might affect the outcome of the suit under the governing  
 16 law will properly preclude the entry of summary judgment.” Id.

17 The Administrative Procedure Act provides for judicial review of agency actions and a  
 18 remedy if the action was “arbitrary, capricious, an abuse of discretion, or otherwise not in  
 19 accordance with law.” 5 U.S.C. § 706(2)(A). Review is generally limited to the administrative  
 20 record. Goffney v. Becerra, 995 F.3d 737, 747–48 (9th Cir. 2021). The arbitrary and capricious  
 21 standard is a narrow one under which the Court cannot substitute its judgment for the agency’s.  
 22 F.C.C. v. Fox Television Stations, Inc., 556 U.S. 502, 513–14 (2009). The touchstone is whether  
 23 the agency demonstrated “reasoned decisionmaking”:

24 An agency must “examine the relevant data and articulate a satisfactory  
 explanation for its action.” “Normally, an agency rule would be arbitrary and

1 capricious if the agency has relied on factors which Congress has not intended it  
 2 to consider, entirely failed to consider an important aspect of the problem, offered  
 3 an explanation for its decision that runs counter to the evidence before the agency,  
 4 or is so implausible that it could not be ascribed to a difference in view or the  
 5 product of agency expertise.”

6 E. Bay Sanctuary Covenant v. Garland, 994 F.3d 962, 981–82 (9th Cir. 2020) (quoting Motor  
 7 Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43–44 (1983))  
 8 (internal citations omitted).

9 In short, the agency’s action must be upheld if it is supported by substantial evidence.  
 10 Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F.2d 1305, 1310 (9th Cir. 1984). This  
 11 means that USCIS’s decision will be upheld if there are any grounds to support the result, while  
 12 Plaintiff must show there are no grounds to support the denial of the petition. Tucson  
 13 Herpetological Soc. v. Salazar, 566 F.3d 870, 880 (9th Cir. 2009) (“We will . . . sustain an  
 14 agency decision resting on several independent grounds if any of those grounds validly supports  
 15 the result, unless there is reason to believe the combined force of these otherwise independent  
 16 grounds influenced the outcome.”).

17 **B. Ability to Pay the Proffered Wage**

18 There was substantial evidence for USCIS to conclude Plaintiff failed to demonstrate its  
 19 ability to pay the proffered wage from the priority date to the present day for two main reasons.  
 20 First, Plaintiff did not submit sufficient financial information for USCIS to conclude that it had  
 21 the present ability to pay. In particular, it did not submit its tax returns or any other financial  
 22 information for 2019 and did not provide a good reason why. It also did not submit financial  
 23 information for 2020, even though its response was not due until October 16, 2020. Second, a  
 24 review of other petitions Plaintiff has submitted to USCIS raised enough questions about its  
 25 ability to pay that USCIS could conclude Plaintiff did not meet its burden.

1        Showing ability to pay the proffered wage is an essential element of Plaintiff's burden  
 2 before the agency:

3        Any petition filed by or for an employment-based immigrant which requires an offer of  
 4 employment must be accompanied by evidence that the prospective United States  
 5 employer has the ability to pay the proffered wage. The petitioner must demonstrate this  
 6 ability at the time the priority date is established and continuing until the beneficiary  
 7 obtains lawful permanent residence. Evidence of this ability shall be either in the form of  
 8 copies of annual reports, federal tax returns, or audited financial statements. In a case  
 9 where the prospective United States employer employs 100 or more workers, the director  
 10 may accept a statement from a financial officer of the organization which establishes the  
 11 prospective employer's ability to pay the proffered wage. In appropriate cases, additional  
 12 evidence, such as profit/loss statements, bank account records, or personnel records, may  
 13 be submitted by the petitioner or requested by the Service.

14        8 C.F.R. § 204.5(g)(2).

15        The employer must show ability to pay through each stage of the process: from the  
 16 priority date through the petition process and "until the beneficiary obtains lawful permanent  
 17 residence." The priority date is "the date the labor certification application was accepted for  
 18 processing by any office of the Department of Labor." 8 C.F.R. § 204.5(d). Here, that date is  
 19 October 21, 2010. (AR at 2.) The petition under consideration was filed December 26, 2018,  
 20 and Plaintiff's response to USCIS's request for evidence was due October 16, 2020.

21        The agency is empowered and obligated to investigate the facts underlying the petition  
 22 and determine whether they are true. The Immigration and Nationality Act provides this  
 23 authority to the Attorney General, who has delegated it to the Department of Homeland Security,  
 24 of which USCIS is part. See 8 U.S.C. § 1103(a)(1); 8 C.F.R. § 2.1. The statute provides:

25        After an investigation of the facts in each case, and after consultation with the  
 26 Secretary of Labor with respect to petitions to accord a status under section  
 27 1153(b)(2) or 1153(b)(3) of this title, the Attorney General shall, if he determines  
 28 that the facts stated in the petition are true and that the alien in behalf of whom the  
 29 petition is made . . . is eligible for preference under subsection (a) or (b) of section  
 30 1153 of this title, approve the petition and forward one copy thereof to the  
 31 Department of State.

1 8 U.S.C. § 1154(b). The regulation specifies what kinds of evidence the agency will consider  
 2 and also makes clear that the agency may request whatever evidence is necessary to determine  
 3 ability to pay. 8 C.F.R. § 204.5(g).

4 The two kinds of evidence the agency considers most relevant here are net income and  
 5 net assets. It summarized Plaintiff's evidence on these categories as follows:

Year	Net Income	Net Current Assets
2010	\$30,255	\$987,839
2011	-\$1,015	\$203,214
2012	\$408,817	\$845,256
2013	\$457,984	\$3,912,734
2014	\$693,011	\$5,930,292
2015	\$1,059,129	\$2,961,088
2016	\$812,684	-\$3,770,230
2017	\$670,432	-\$4,638,193
2018	\$3,732,179	\$1,440,021
2019	Not provided	Not provided
2020	Not provided	Not provided

12 (AR at 3–4.) USCIS found that, based solely on these numbers, Plaintiff showed it could pay the  
 13 proffered wage of \$94,307 from 2010 to 2018. (Id. at 4.) But it ultimately concluded Plaintiff  
 14 did not meet its burden for two reasons. First, Plaintiff did not provide evidence showing a  
 15 present ability to pay (2019–2020). Second, a review of other approved petitions revealed that  
 16 Plaintiff had not in fact paid the proffered wage after approval in many cases and that, if it had, it  
 17 would not have been able to show continuing ability to pay the wage of the petition here.  
 18

19       1.     *Failure to provide financial information for 2019 and 2020.*

20       USCIS faulted Plaintiff for not providing its 2019 tax returns or any other financial  
 21 information for 2019 or 2020 and determined that Plaintiff did not meet its burden to show  
 22 present ability to pay. (AR at 5.) This portion of the agency's decision is supported by  
 23 applicable regulations and the record.  
 24

1        The regulation requires the employer to show ability to pay through each stage of the  
 2 process. 8 C.F.R. § 204.5(g)(2) (“The petitioner must demonstrate this ability at the time the  
 3 priority date is established and continuing until the beneficiary obtains lawful permanent  
 4 residence.”); see also id. § 103.2(b) (“An applicant or petitioner must establish that he or she is  
 5 eligible for the requested benefit at the time of filing the benefit request and must continue to be  
 6 eligible through adjudication.”). In addition, the regulation specifically identifies tax returns as  
 7 one of the required documents to submit. Id. § 204.5(g)(2) (“Evidence of this ability shall be  
 8 either in the form of copies of annual reports, federal tax returns, or audited financial  
 9 statements.”).

10       Plaintiff’s argument that it could not have submitted 2019 tax returns without prejudicing  
 11 its response to USCIS is not persuasive. The request for evidence was issued May 22, 2020.  
 12 (AR at 14.) Plaintiff’s response was due August 17, 2020. (Id.) USCIS extended all deadlines  
 13 by 60 days due to the Covid-19 pandemic. (See AR at 5 & 44.) This made Plaintiff’s response  
 14 due October 16, 2020. The deadline for federal tax returns was extended to October 15, 2020.  
 15 (See AR at 444.)

16       Plaintiff believes the extended deadline for federal filing supports its argument that it  
 17 could not submit its taxes to USCIS in time. That does not add up. Plaintiff has the burden of  
 18 proof before the agency. 8 U.S.C. § 1361. Even accepting the argument, Plaintiff could have  
 19 submitted other recent supporting information. The agency may be more forgiving about gaps in  
 20 ability to pay in earlier years if the present ability to pay were undisputed. See Taiyang Foods  
 21 Inc. v. U.S. Citizenship & Immigr. Servs., No. C10-0109 JLR, 2010 WL 3732193, at \*3–4  
 22 (W.D. Wash. Sept. 20, 2010), aff’d, 444 F. App’x 115 (9th Cir. 2011) (discussing In re matter of  
 23 Sonegawa, 12 I. & N. Dec. 612 (BIA 1967), in which agency held employer could establish  
 24

1 ability to pay by showing reasonable expectation of future profits in exceptional cases). In any  
 2 case, it is well established that the employer must show ability to pay through the present. E.g.,  
 3 id. at \*1.

4 Plaintiff has since filed its 2019 tax return and asks the Court to consider it. (See Dkt.  
 5 No. 31, Ex. C.) The Court may consider evidence outside the administrative record only in  
 6 “limited circumstances that are narrowly construed and applied.” Goffney v. Becerra, 995 F.3d  
 7 737, 747–48 (9th Cir. 2021), cert. denied, 2021 WL 5763131 (U.S., Dec. 06, 2021) (internal  
 8 quotation marks omitted). Such circumstances include when the agency has relied on documents  
 9 not in the record or when a plaintiff makes a showing of agency bad faith. Id. at 748.

10 Plaintiff’s argument here is different and does not track the case law. It argues it was  
 11 arbitrary and capricious for USCIS to insist that they submit the 2019 return and that, instead,  
 12 USCIS should have issued a second request for evidence to obtain it. This argument is not  
 13 persuasive for several reasons: USCIS lacks discretion to extend the time to respond to a request  
 14 for evidence, 8 C.F.R. § 103.2(b)(8)(iv); there is no requirement for USCIS to make additional  
 15 requests for evidence as Plaintiff suggests; and this is Plaintiff’s fifth petition for this beneficiary,  
 16 which was itself previously denied and then reopened for adjudication. For these reasons, it  
 17 would be difficult to conclude that declining to grant an extension or issue another request for  
 18 evidence was contrary to law.

19           2.       *Ability to pay wage of other petitions.*

20 USCIS also found Plaintiff did not demonstrate ability to pay based on a review of other  
 21 petitions Plaintiff has submitted. USCIS’s decision states that an employer must show ability to  
 22 pay the wage of not only the instant petition but all pending petitions it has before the agency:

23           In reviewing the information above, the petitioner’s net income or net current  
 24 assets for most years would be sufficient to pay the offered wage of \$94,307.  
 However, as discussed in the [request for evidence], where a petitioner has filed

1       multiple petitions for multiple beneficiaries, the petitioner must produce evidence  
 2       that its job offers to all beneficiaries are realistic, and therefore that it has had the  
 3       ability to pay the proffered wages to each of the beneficiaries of its pending  
 4       petitions, as of the priority date of each petition and continuing until the  
 5       beneficiary of each petition obtains lawful permanent residence.

6       (AR at 4 (citing Matter of Great Wall, 16 I&N Dec. 142, 144–45 (Acting Reg. Comm. 1977); 8

7       C.F.R. § 204.5(g)(2); and Patel v. Johnson, 2 F. Supp. 3d 108, 124 (D. Mass. 2014).)

8       In its request for evidence, USCIS asked Plaintiff to provide information about its other  
 9       pending I-140 petitions so that it could assess ability to pay. (AR at 21–22.) Plaintiff provided a  
 10      spreadsheet listing about 123 petitions. (AR at 5; see id. at 446–48.) Plaintiff also provided w-2  
 11      forms issued to other beneficiaries. The spreadsheet showed almost all of the petitions were  
 12      withdrawn in 2020, after USCIS had issued the request for evidence. (AR at 446–48.) Plaintiff  
 13      represented that it was now only pursuing 18 petitions, all of which had been approved except  
 14      for the instant one.

15       However, USCIS reviewed its own records and found a number of discrepancies. Its  
 16      records showed Plaintiff had closer to 150 petitions. (AR at 5.) It also turned up petitions for  
 17      beneficiaries with priority dates between 2009 and 2012 that had been approved, some of which  
 18      did not appear on Plaintiff's spreadsheet or were listed as withdrawn. (Compare AR at 12–13  
 19      with AR at 446–48.) USCIS compared the proffered wage for each of these beneficiaries to  
 20      what Plaintiff actually paid and found a gap of more than \$1,000,000 for the four years in which  
 21      Plaintiff showed net income and net assets of less than that amount, 2011, 2012, 2016, and 2017.  
 22      (AR at 12–13.) In other words, if Plaintiff had actually paid the proffered wage to these  
 23      beneficiaries after the petitions had been approved, it would not have had enough cash flow to  
 24      pay the proffered wage of the instant petition. But to obtain a labor certification, the employer  
 25      must certify that “the offered wage equals or exceeds the prevailing wage,” “the wage the

1 employer will pay . . . will equal or exceed the prevailing wage,” and that it “has enough funds  
 2 available to pay the wage or salary offered.” 20 C.F.R. § 656.10(c)(1), (3).

3 Plaintiff correctly points out that there is a lack of support for some of the language  
 4 USCIS uses to describe the employer’s obligation on this point. (See AR at 4.) Defendants state  
 5 that USCIS has consistently required sponsors to show ability to pay all pending petitions but  
 6 only one of the cases it cites involved a review of an employer’s other visa petitions. See Patel  
 7 v. Johnson, 2 F. Supp. 3d 108, 124 (D. Mass. 2014). Even in that case, the court found multiple  
 8 independent bases for upholding the denial, so the fact that USCIS found the employer also  
 9 could not pay all other beneficiaries was not dispositive. See id. at 123–24.<sup>2</sup>

10 None of the cases Defendants cite stand for the proposition that an employer must prove  
 11 ability to pay all pending petitions for a single one to be approved. See Matter of Great Wall, 16  
 12 I&N Dec. 142, 144–45 (Acting Reg. Comm. 1977) (no other petitions discussed); Tongatapu  
 13 Woodcraft Hawaii, Ltd. v. Feldman, 736 F.2d 1305, 1307 (9th Cir. 1984) (upholding agency  
 14 decision to revoke two visas because company did not have ability to pay wages; no other  
 15 petitions discussed); Econo Inn Corp. v. Rosenberg, 145 F. Supp. 3d 708, 716 (E.D. Mich. 2015)  
 16 (considered wages paid to other employees but no other petitions discussed); Taco Especial v.  
 17 Napolitano, 696 F. Supp. 2d 873, 880–81 (E.D. Mich. 2010) (no other petitions discussed);  
 18 Taiyang Foods Inc. v. U.S. Citizenship & Immigr. Servs., No. C10-0109 JLR, 2010 WL  
 19 3732193, at \*3–4 (W.D. Wash. Sept. 20, 2010) (same). It is true that the employer has that  
 20 burden for each individual petition, but USCIS is not considering whether to approve or deny all  
 21 pending petitions at this time.

22 \_\_\_\_\_  
 23 <sup>2</sup> The court in Patel also described USCIS’s reasoning on this point as “thin,” but deferred to agency interpretation  
 24 under Auer v. Robbins, 519 U.S. 452 (1997). Patel, 2 F.Supp.3d at 122 n.15. But see Kisor v. Wilkie, 139 S. Ct.  
 2400 (2019) (affirming Auer but clarifying standard under which courts must defer to agency interpretations of  
 ambiguous regulations).

1 The facts USCIS relied on, however, show there is a reasoned basis for the denial on a  
 2 narrower and more nuanced ground than what Plaintiff describes. USCIS considered whether  
 3 Plaintiff had in fact paid the proffered wage to other beneficiaries after petitions were approved.  
 4 (AR at 5–6, 12–13.) This is relevant to considering whether an employer has demonstrated  
 5 ability to pay the proffered wage for an individual petition because the employer is representing  
 6 that it can and will pay that wage. The regulation supports this reasoning. It requires the  
 7 employer to provide evidence demonstrating it has the ability to pay the proffered wage from the  
 8 priority date all the way through lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Ability to  
 9 pay is a broad term that reasonably encompasses pay to other employees. See Tongatapu  
 10 Woodcraft Hawaii, Ltd. v. Feldman, 736 F.2d 1305, 1309 (9th Cir. 1984) (“determination of a  
 11 petitioning employer’s financial viability” showing ability to pay is made by USCIS).

12 The regulation also permits USCIS to request more evidence, including those relating to  
 13 pay and personnel. See 8 C.F.R. § 204.5(g)(2) (“In appropriate cases, additional evidence, such  
 14 as profit/loss statements, bank account records, or personnel records, may be submitted by the  
 15 petitioner or requested by [USCIS].”) See also River Street Donuts, LLC v. Napolitano, 558  
 16 F.3d 111, 117 (1st Cir. 2009) (“There is no question that the [USCIS Administrative Appeals  
 17 Office] has discretion to decide how to weigh relevant evidence in assessing a prospective  
 18 employer’s ability to pay a proffered wage”). Finally, USCIS’s conclusion is supported by the  
 19 statute, which requires the agency to investigate the facts of the petition and determine whether  
 20 they are true. 8 U.S.C. § 1154(b). It was Plaintiff’s obligation to explain any discrepancies to  
 21 USCIS and show that it had the continuing ability to pay.

22 Given Plaintiff’s failure to provide evidence of its continuing ability to pay through the  
 23 present and its failure to rebut USCIS’s conclusion that it did not in fact pay the proffered wage  
 24

1 to employees after their petitions were approved, there is substantial evidence in the record to  
 2 support USCIS's denial on this basis alone.

3 **C. Bona Fide Offer**

4 USCIS also denied the petition on the ground that Plaintiff did not establish the offer was  
 5 bona fide. (AR at 6–10.) USCIS provided several independent bases for its decision. First,  
 6 Plaintiff provided insufficient evidence to establish the job offer was bona fide in the proposed  
 7 location at the time it applied for the labor certification. Second, when Plaintiff sought a labor  
 8 certification for this position, it also sought labor certifications for other positions, the combined  
 9 wages of which exceeded the company's net income or net assets at the time. Third, the  
 10 beneficiary's strong ties to Pennsylvania undercut his attestation that he would relocate to the  
 11 Seattle metropolitan area. Fourth, and finally, Plaintiff's apparent preference for hiring family  
 12 members, including the beneficiary here, cast doubt on its certification that the position was  
 13 genuinely open to U.S. workers.

14 Before a company can file a petition to USCIS, it must first seek a certification from the  
 15 Department of Labor that there are insufficient U.S. workers available for the position where it is  
 16 based and that hiring a noncitizen will not adversely affect the wages of U.S. workers. 8 U.S.C.  
 17 § 1182(a)(5)(A)(i). When applying for the certification, the employer must certify that a number  
 18 of facts are true, including:

19 The offered wage equals or exceeds the prevailing wage . . . and the wage the  
 20 employer will pay . . . will equal or exceed the prevailing wage . . . ;

21 The employer has enough funds available to pay the wage or salary offered the  
 22 alien . . . ; and

23 The job opportunity has been and is clearly open to any U.S. worker.

24 20 C.F.R. § 656.10(c)(1), (3) & (8).

1 Plaintiff argues that, unlike “ability to pay,” which is expressly identified as a  
 2 requirement in the regulation discussed above, there is no legal basis for USCIS to deny a  
 3 petition based on the conclusion that the position offered is not bona fide. USCIS has authority  
 4 to determine whether the labor certification is valid and to invalidate it for fraud or willful  
 5 misrepresentation. 20 C.F.R. § 656.30 (“after issuance, a labor certification is subject to  
 6 invalidation by the DHS . . . upon a determination, made in accordance with those agencies’  
 7 procedures or by a court, of fraud or willful misrepresentation of a material fact involving the  
 8 labor certification application.”). See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F.2d  
 9 1305, 1309 (9th Cir. 1984). The Ninth Circuit has noted that DOL’s function in making the  
 10 labor certification “is limited to making findings about conditions in the domestic labor market,”  
 11 and that USCIS is charged with case-specific fact-finding. K.R.K. Irvine, Inc. v. Landon, 699  
 12 F.2d 1006, 1009 (9th Cir. 1983).

13 Plaintiff points to that regulation as limiting USCIS’s authority to enforce against fraud  
 14 or willful misrepresentation and that its hands are tied if it does not invalidate the labor  
 15 certification. But, in addition to that regulatory authority, the INA empowers and directs USCIS  
 16 to investigate the facts underlying the petition and determine whether they are true. 8 U.S.C.  
 17 § 1154(b). Finally, it is the burden of the employer to show eligibility for the visa from the date  
 18 of application through adjudication. 8 C.F.R. § 103.2(b). For these reasons, Plaintiff has not  
 19 shown that the only grounds USCIS can rely on to deny a petition are ability to pay, 8 C.F.R. §  
 20 204.5(g)(2), or fraud and willful misrepresentation, 20 C.F.R. § 656.30.

21       1.       *Insufficient evidence of work location at time of labor certification.*

22       USCIS found there was insufficient evidence to conclude Plaintiff could actually employ  
 23 the beneficiary at the proposed worksite location listed in the application for the labor  
 24 certification. (AR at 6–8.) In particular, the address Plaintiff listed in the form submitted to

1 DOL was no longer active at the time the form was submitted. (AR at 8.) While Plaintiff  
 2 provided information about office locations around that time, it did not provide any evidence of  
 3 what kind of business activities were being conducted at the addresses provided, so USCIS was  
 4 unable to determine whether the locations were used as actual worksites or as unoccupied  
 5 business or mailing addresses.

6 Plaintiff argues it is unreasonable to require it to submit decade-old documentation. In  
 7 support, Plaintiff cites the DOL regulation requiring employers to keep records for five years  
 8 from the date of filing for audit. See 20 C.F.R. § 656.10(f). But, again, Plaintiff has the burden  
 9 of proof before the agency. 8 U.S.C. § 1361. In addition, this is not Plaintiff's first petition for  
 10 this beneficiary using this labor certification. This is its fifth. It filed two others in 2011 and two  
 11 in 2012 and 2014. (AR at 16–21.) Plaintiff has not been waiting a decade for its chance to file.  
 12 While the Court would give more weight to evidence relating to the current proposed office  
 13 location than to one from 2010–11, USCIS has provided a legal and factual basis for this  
 14 conclusion which Plaintiff has not shown is contrary to the record.

15       2.       *Insufficient evidence of ability to pay proffered wage at time of labor  
 16 certification.*

17       USCIS also questioned whether there was a bona fide position available when the priority  
 18 date was established. (AR at 8.) It noted that Plaintiff filed eleven petitions with priority dates  
 19 from the year 2010 and that the combined proffered wages of those petitions was \$1.4 million,  
 20 which exceeded Plaintiff's net income (\$30,255) and net assets (\$987,839) at the time. (AR at  
 21 8–9.) This finding cast doubt on Plaintiff's attestation that it had funds available to pay the  
 22 proffered wages. See 20 C.F.R. § 656.10(c)(3). This issue goes to USCIS's mandate to  
 23 determine whether the facts underlying a petition are true, not whether Plaintiff has shown ability  
 24 to pay the proffered wage, but Plaintiff did not address this issue separately.

1       3.     *Insufficient evidence the beneficiary will relocate if approved.*

2       USCIS was not convinced that the beneficiary would relocate to the position's proposed  
 3 location in the greater Seattle area. (AR at 9.) USCIS noted that the beneficiary and his wife  
 4 have owned a home in Pennsylvania since 2010; that Plaintiff had employed the beneficiary from  
 5 2011–15 without the need to relocate; and that the beneficiary's wife, who is also the sister of the  
 6 company's owner and a beneficiary of a separate petition Plaintiff filed, was employed by  
 7 Plaintiff from 2015–19, without the need to relocate. Notably, the petition for the beneficiary's  
 8 wife was approved, her lawful permanent residence application is pending, and she is one of the  
 9 few beneficiaries to whom Plaintiff has paid the proffered wage after approval. (See AR at 12.)

10      The beneficiary, Mr. Achanta, submitted an affidavit in which he stated that he would  
 11 relocate to accept the position and emphasized his family connections to the Seattle area. (AR at  
 12 77–78.) While the Court may not read the facts the same way as USCIS—accepting a permanent  
 13 position that carries with it a path to legal permanent residency is a good enough reason to  
 14 relocate—the standard of review requires only that the agency provide a reasoned basis for its  
 15 decision. USCIS considered Mr. Achanta's sworn statement that he would move for the position  
 16 but did not give it substantial weight in light of the other facts indicating strong ties to  
 17 Pennsylvania and his and his wife's history of working for PeopleTech from that location.

18       4.     *Insufficient evidence the position was open to U.S. workers.*

19      Finally, USCIS found that Plaintiff's initial failure to disclose the familial relationship  
 20 between Plaintiff's owner and the beneficiary on the labor certification application and apparent  
 21 preference for hiring family members raised questions about whether the "job opportunity has  
 22 been and is clearly open to any U.S. worker." See 20 C.F.R. § 656.10(c)(8). Of the 18 petitions  
 23 Plaintiff states it is actively pursuing, three are for family members of the company's owner: his  
 24 brother-in-law (the beneficiary); his sister (the beneficiary's wife); and his cousin. (AR at 10.)

1 USCIS also noted Plaintiff failed to disclose familial relationships in its petitions for the owner's  
2 sister and cousin. (AR at 10.) While the existence of a familial relationship alone may not be a  
3 sufficient basis to deny a petition, at least one court has found failure to disclose it is, because it  
4 closes off a line of investigation to ensure the position is "clearly open to any U.S. worker."  
5 Diamond Miami Corp. v. United States Citizenship & Immigr. Servs., 2019 WL 4954807, at \*3  
6 (S.D. Fla. Oct. 8, 2019).

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8 In sum, the Court finds there is at least one ground to uphold USCIS's decision—in  
9 particular, Plaintiff's failure to submit its 2019 tax returns, or similar financial information  
10 showing present ability to pay. USCIS has provided a reasoned basis for its denial and Plaintiff  
11 has not shown the decision is unsupported by substantial evidence. Therefore, the Court finds  
12 the decision was not arbitrary, capricious, or contrary to law. Plaintiff's motion for summary  
13 judgment is DENIED. Defendants' cross-motion is GRANTED and this proceeding is  
14 DISMISSED.

15 The clerk is ordered to provide copies of this order to all counsel.

16 Dated January 11, 2022.

17 

18 Marsha J. Pechman  
19 United States Senior District Judge  
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